

**MEMORANDUM OF UNDERSTANDING AND
AGREEMENT FOR KING COUNTY
FLOODPLAIN STRUCTURE ELEVATION PROJECT**

THIS MEMORANDUM OF UNDERSTANDING AND AGREEMENT FOR KING
COUNTY FLOODPLAIN STRUCTURE ELEVATION PROJECT (“Agreement”), by and between
King County (“County”) and «First_Name» «Last_Name» (“Owner”),

WITNESSETH:

RECITALS

1. Recitals

1.1 The County is a municipal corporation of the State of Washington.

1.2 The Owner is the owner of certain real property located at «Situs_Address», King
County, Washington (“Property”). A legal description is set forth in Appendix A, attached hereto, which
is incorporated herein and made a part hereof as though set forth in full. Improvements on that Property
include «Structure» (“Structure”), which is the subject of this Agreement.

1.3 The Structure has been, or is in jeopardy of being, damaged by flooding. This hazard is
confirmed by the Flood Insurance Rate Map, which identifies the elevation of the 100-year Base Flood
Elevation (“BFE”) that is higher than the lowest habitable finished floor (“Floor”) of the Structure. The
Owner desires to reduce this hazard by making certain structural modifications (“Floodplain Structure
Elevation Project” or “Project”) that will raise and secure the Floor at a higher elevation that is at least
one foot above the BFE.

1.4 The County has entered into project agreements with the U.S. Army Corps of Engineers
and the City of Snoqualmie for cooperative completion of a channel excavation project to reduce flood

depths and damages in and around the City of Snoqualmie. Design analysis for that project shows that it may cause a small adverse impact to downstream flood problems. More specifically, the U.S. Army Corps of Engineers has estimated that the project in Snoqualmie could cause downstream flooding to be deepened by one-tenth of one foot or less. In order to provide mitigation for downstream impacts, the agreements provide funding for a Floodplain Structure Elevation Program (“Program”) to assist with the elevation of structures located within the floodplain and within the County where such impacts may occur. These agreements specify that the County will manage the Program and will disburse the Program funds being provided by all three agencies.

1.5 Program funding is limited and would provide only a small share of the cost to elevate all of the floodplain structures that are within the Program area. In order to equitably distribute these limited Program funds, the County will provide a uniform percentage share of all eligible expenses as a reimbursement to all participating Owners. Therefore, the Program cost share of any individual Project will depend not only upon the costs of that one individual Project but also upon the total costs of other similar Projects throughout the Program.

1.6 From letters and/or statements of interest submitted by the Owners concerning Owner participation in the Program, the County has identified the Structure as eligible for elevation, up to a maximum eligible amount of Program costs for the Structure as set forth in Section 3 and subsection 5.4 of this Agreement.

1.7 The Owner desires to pay the Owner Share of project costs that relate to the Structure. The Owner Share is defined as the total costs less the Program cost paid by the County under this Agreement. Therefore, the Owner Share includes: (1) the unreimbursed portion of all eligible costs, after

application of the percentage rates described herein; (2) any costs in excess of the maximum eligible cost authorized herein; and (3) any ineligible project costs as set forth herein.

1.8 Housing Rehabilitation loans may be available to assist the participating Owners with their share of the Floodplain Structure Elevation Project costs as described in subsection 1.7 above. The sponsoring agency responsible for these funds is the Housing Repair Program of the King County Department of Community and Human Services. In the event the Owner is interested in applying for a Housing Rehabilitation loan, as described herein, the Owner should contact the Housing Repair Program for application materials, loan terms, or any other inquiries. The County makes no guarantee, warranty or covenant in this Agreement that any such loan funds will in fact be provided to Owner.

IN CONSIDERATION of the foregoing premises and the mutual obligations as set forth below, it is agreed as follows:

AGREEMENT

2. Scope of Floodplain Structure Elevation Project

2.1 The Floodplain Structure Elevation Project includes activities necessary to design, permit, and implement flood protection of the Structure by raising the Floor of the Structure identified in this Agreement. The general project approach is for the Owner to select and hire contractors, supervise their work, and request reimbursement from Program funds. The King County Department of Natural Resources and Parks (“DNRP”) will administer the Program and will primarily act as a conduit of Program funds. Subsequent sections of this Agreement describe the respective rights, responsibilities and obligations of the parties in greater detail.

2.2 Time is of the essence in the performance of this Agreement. Program funds are available only during the Program Period, which expires on December 10, 2004, unless it is specifically extended by the County, at the County's sole discretion. Any expenses incurred after the Program Period will not be eligible for reimbursement. Moreover, if the Floodplain Structure Elevation Project is not completed within the Program Period, any expenses related to the Project are ineligible for reimbursement, and any Program payments already made may be subject to recapture, at the sole discretion of the County.

2.3 The Floodplain Structure Elevation Project shall be performed by a licensed and bonded contractor ("Contractor"); no credit shall be allowed for any work performed directly by the Owner unless the Owner is a licensed, bonded Contractor and such Owner submits three itemized bids from independent Contractors (not the Owner), each of which must provide detailed costs for the work to be done by the Owner. Reimbursement for that work will not exceed the least of the three itemized bids of the independent Contractors.

2.4 The Owner shall be responsible for raising the Structure such that the Floor is at least one foot above the BFE; the BFE shall be determined from the best available information. King County recommends that the Owner have a professional land surveyor establish an elevation benchmark on site for use during Project construction. King County also recommends that the Owner have the surveyor verify that the raised foundation is built to the appropriate height before the floodplain structure is lowered onto the raised foundation. This recommended survey work is in addition to the survey work that is specifically required for the Elevation Certificate completion as referred to in subsection 5.9 of this Agreement.

2.5 All utilities and mechanical equipment, such as furnaces and hot water heaters, are to be raised to at least one foot above the BFE. If these existing features are below the floor and will rise with the structure, cost-effective application of this requirement may force the Floor to be raised more than one foot above the BFE.

2.6 The Owner may choose to elevate the Structure, utilities, or mechanical equipment in excess of the minimum requirements described in subsections 2.4 and 2.5. The Owner shall be responsible for providing documentation identifying precisely the portion of the costs attributable to elevation in excess of these minimum requirements, and that portion of the costs will not be eligible for reimbursement, but shall be the responsibility of the Owner to pay.

2.7 The Owner shall maintain compliance with all applicable permits, regulations and approvals, including all floodplain management standards.

2.8 The Owner understands and shall instruct the Contractor that due to soil liquefaction hazards, design engineering must be utilized to mitigate such hazards. Mitigation proposals shall be prepared by a licensed architect, geotechnical engineer or structural engineer in accordance with the standards contained in KCC 21A.24.290, which involves seismic standards.

2.9 The Owner understands that the County is neither a party to, nor a guarantor of, the Owner's contract with the Contractor. The County makes no endorsement, recommendation or warranty regarding experience, qualifications, competence or expertise of any Contractor. The Owner has sole responsibility for evaluating whether a Contractor is capable and possesses the necessary skills, expertise, insurance and resources necessary to perform the Floodplain Structure Elevation Project within budget and on time. The Owner has sole responsibility for selecting and managing the Contractor.

The Owner agrees and acknowledges that the Owner shall be solely liable to the Contractor for payment of all costs and for any other matters related to the Floodplain Structure Elevation Project. The Owner shall indemnify and hold the County harmless against any claim of any nature by the Contractor in connection with or arising in any manner out of the Floodplain Structure Elevation Project. In the event of a dispute between the Owner and the Contractor, the Owner and the Contractor shall be responsible for resolution and the County shall have no responsibility or obligation in the resolution process or outcome.

2.10 The Owner understands that federal funding has been provided for this Floodplain Structure Elevation Project. The Owner further understands that providing false information or accepting funds back from a contractor as consideration for awarding the contract can constitute a violation of federal law (Copeland Act – 40 U.S.C. §276c) and that violators may be subject to significant penalties and sanctions. The Owner represents that he/she (they) have not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this Floodplain Structure Elevation Project.

3. Program Reimbursements

3.1 The Program will provide a limited reimbursement for a percentage share of eligible project expenses as specified herein. Eligible expenses for this Project are limited to the actual costs incurred for completion of the eligible tasks as defined in this Section.

3.2 Eligible expenses for protection of this Structure are limited to «Estimate» or the lowest bid submitted pursuant to subsection 2.3) of this Agreement, whichever is less.

3.3 Program will provide reimbursement for eligible expenses that will be calculated as a percentage share of the eligible expenses as defined in subsection 3.5 below. The Program will pay an initial reimbursement equal to «Grant_percentage» of those eligible expenses.

3.4 In the event that surplus Program funds remain, after initial reimbursements have been paid to all Program participants (including others who are not party to this Agreement), the County will first apply those surplus funds to the County's administrative expenses for the Program. Any remaining surplus will then be used to increase the percentage rate of reimbursement for all eligible costs incurred by all Program participants. The same increased percentage rate of reimbursement will be used for all Program participants. Regardless of any surplus, the percentage rate of reimbursement will not exceed 100%.

3.5 Eligible costs are the actual costs for eligible tasks, including design and permit costs for those tasks, as well as Washington State sales tax, within the limitations specified above. Eligible tasks include the following:

- a) Raising the Structure itself;
- b) Raising the roof and extending the walls of a side-structure, such as a garage, if it is attached to the Structure;
- c) Performing seismic structural mitigations required by the King County Code and the Uniform Building Code because of the Structure's location within a mapped hazard area;
- d) Raising mechanical equipment such as the furnace, water heater, fuel storage, the main electrical panel, and any associated switches, valves, or meters that must rise with the Structure;
- e) Extending utility connections for electrical power, heating or cooking fuel, incoming potable water, and wastewater discharge;
- f) Meeting access requirements of applicable building codes, including stairs with landings and guardrails at existing exterior doors;

- g) Creating large vent openings in the foundation and walls sufficient to meet the size requirements for flood water entry and exit that would be applicable to new construction; and
- h) Completing an Elevation Certificate to verify the as-built relationship between the Floor and the BFE.

4. Ineligible Floodplain Structure Elevation Project Costs

4.1 The costs associated with the following tasks are specifically ineligible and will not be reimbursed:

- a) Any work that is not strictly necessary to the safe completion of the Floodplain Structure Elevation Project;
- b) Any repair of existing deficiencies, whether known or unknown. These could include, but are not limited to, structural deficiencies such as dry rot or insect damages, as well as deterioration, disrepair, or inadequacy of plumbing, heating, or other systems;
- c) Modifications or improvements to the septic system, except for the simple extension of lines from the raised house to the existing system in the ground;
- d) Additional costs for elevation more than one foot above the BFE;
- e) Modifications to driveways or to garage floors;
- f) Modifications to accessory structures that are not attached to the Structure that is the subject of this Agreement;
- g) Modifications to hot tubs, spas, pools, or related structures and accessories;
- h) Modifications to decks or patios, except for those modifications that are specifically required by building codes such as stairway or landing modifications as described in (f) of subsection 3.5 of this Agreement;
- i) Filling, grading, or landscaping;
- j) Lost rents or any additional living expenses such as for an alternate structure or any other replacement of function or convenience normally associated with the Owner's use of the Structure. These costs are not eligible for Program reimbursement, even if the Structure is rendered temporarily or permanently unsafe or unsuitable for use or occupancy; and

- k) In the event that the Floodplain Structure Elevation Project is not completed for the Structure, any and all costs for design, permits, or any otherwise eligible tasks are ineligible and will not be reimbursed. If costs have been previously reimbursed, the Owner will be responsible for repaying such costs to the County.

5. Project Sequence and Payments

5.1 The Owner shall secure the services of a professional designer(s), to the extent required for permit application and approvals.

5.2 The Owner shall obtain a minimum of three itemized bids for the Floodplain Structure Elevation Project from licensed and bonded Contractors. The bids are to be clearly itemized, and must identify and separate eligible costs from ineligible costs. All eligible costs are to be clearly identified and to reference specific tasks that are identified in this Agreement as eligible Floodplain Structure Elevation Project tasks.

5.3 The Owner shall submit all bids to the County for review and approval as meeting the minimum requirements for a responsive bid. Approval shall be at the County's sole discretion. (A minimum of three bids must be submitted to the County for review.) The County shall review the bids to determine conformance with requirements of the Program, and notify the Owner whether the bids conform. Bids that do not conform will not be considered or approved.

5.4 After the County reviews and approves at least three bids as conforming for the Floodplain Structure Elevation Project at the Structure, the County will issue a Notice to Proceed to the Owner. The Notice to Proceed will identify the maximum eligible expense for the Floodplain Structure Elevation Project with regard to the Structure. If the lowest bid, in terms of eligible expense, is less than the maximum eligible expense, then the maximum eligible expense will be reduced to match the lowest bid. The County shall notify the Owner of the maximum amount of funds available for reimbursement to

the Owner under the Program. Any costs in excess of this amount shall be the sole responsibility of the Owner.

5.5 Within thirty (30) days after the County issues the Notice to Proceed, the Owner shall enter into a contract with any Contractor of the Owner's choice whose bid has been approved by the County. The contract between the Owner and Contractor shall require the work for the Floodplain Structure Elevation Project to be completed within one hundred twenty (120) days, but in no case shall the construction contract extend beyond the Program Period as specified in subsection 2.2 of this Agreement. The Owner shall provide a signed copy of the contract with the Contractor to the County.

5.6 The Owner shall obtain all necessary Federal, State and County permits and approvals prior to commencing the work and provide copies of these permits and approvals to the County. The Owner shall be responsible for compliance with all applicable codes and regulations in performance of the work performed for the Floodplain Structure Elevation Project.

5.7 The County shall make progress payments at three (3) interval points based on percentage of Work completed and one final payment following completion of the Work. Requests for progress and final payments shall be made on a form provided by the County, which shall be prepared and signed by the Contractor, and must be approved by the Owner. The County shall determine the percentage of completion for purposes of authorizing progress payments. The amount of the progress payment shall be reduced by ten percent (10%) for holdback to be paid when the work is given final approval. Checks will be made payable to the Owner, and will be issued within 60 days after the receipt of the payment request form with all required supporting documentation from the Owner.

5.8 If the Owner elects for any reason to terminate participation in the Floodplain Structure Elevation Project prior to completion, the Owner shall reimburse the County for any payments made from Program funds prior to the date of such termination and recognizes that no future payments will be received from such date.

5.9 After completion of the work, but prior to the final payment of Program funds, the Owner shall be required to submit to the King County Department of Development and Environmental Services an acceptable Elevation Certificate prepared by a professional land surveyor.

5.10 Prior to the final payment to the Contractor, the Owner shall execute a covenant in recordable form, as provided by the County, declaring the elevation of the lowest floor, including basement, of the elevated structure as established in the plans for the work, and covenanting for the Owner and the Owner's heirs, successors, and assigns, that the area below the lowest floor, including basement, as established in the plans for the work, shall not be used or converted to living area for human habitation, or otherwise altered in a manner which would impede the movement of waters beneath the Structure. A copy of the form to be used for this covenant is attached as Appendix B, attached hereto, which is incorporated herein and made a part hereof as though set forth in full. The Owner shall record the original of such covenant in the real property records of King County upon completion of the Floodplain Structure Elevation Project for the Structure.

6. Informed Consent - Release/Hold Harmless

6.1 The Owner shall execute together with this Agreement an Informed Consent, Release And Agreement To Hold Harmless, Indemnify And Defend, as set forth in Appendix C, attached hereto, which upon execution is incorporated herein and becomes a part hereof as though set forth in full.

7. Entire Agreement/Waiver/Default

7.1 This Agreement sets forth the complete expression of the agreement between the parties hereto, and any oral representations or understandings not incorporated herein are excluded. The parties recognize that time is of the essence in the performance of this Agreement. There are no commitments, warranties, representations, understandings or agreements other than those expressly set forth herein.

Waiver of any default shall not be deemed to be a waiver of any other or subsequent default. Waiver or breach of any provision of this Agreement shall not be construed to be a modification of the terms of this Agreement unless stated to be such through written approval by the County, which shall be attached to the original of this Agreement. In the event of default or breach of any of the terms or provisions of this Agreement by the Owner, King County shall be entitled to a full refund of any and all payments made to the Owner, and shall be relieved of any obligation to pay the Owner any additional funds.

7.2 The recitals are a material part of this Agreement and are fully incorporated herein and made a part hereof.

7.3 This Agreement may only be amended by written agreement signed by both parties.

COUNTY OF KING

OWNER(S) NAME

Print Name: _____
Dated: _____

Print Name: _____
Date: _____

Print Name: _____
Date: _____

LEGAL DESCRIPTION

«Legal_Description»

Parcel Number: «PIN»

Draft

APPENDIX B

KING COUNTY FLOODPLAIN STRUCTURE ELEVATION COVENANT

WHEREAS, the United States of America, acting through the U.S. Army Corps of Engineers, the City of Snoqualmie, and King County, Washington have each provided a cost share toward a Floodplain Structure Elevation Project; and

WHEREAS, «Structure» (“Structure”) located at «Situs_Address», is eligible for raising-in-place in connection with said Floodplain Structure Elevation Project; now, therefore;

FOR AND IN CONSIDERATION of the benefits to be derived from participation in said Floodplain Structure Elevation Project, I (we), «First_Name» «Last_Name», the owner(s) of said Structure, do hereby promise and covenant that on completion of said raising-in-place, no part of the raised Structure located below the level of the lowest habitable finished floor will thereafter be converted to living area for human habitation, or otherwise altered in a manner which would impede the movement of waters beneath the Structure.

The Structure identified above is located on the land described in a deed from «Deed_From» to «Deed_To», dated «Deed_Date», and identified with recording number(s) «Ref_Recording_Numbers» in the records of King County, Washington.

The promise and covenant made herein shall run with the land, and shall be binding on our heirs, successors, and assigns. I (We) furthermore agree not to file a claim against King County for contents stored beneath the lowest habitable finished floor of the Structure that may be damaged by floodwaters or to file claims for damages to the area beneath the lowest habitable finished floor of the Structure.

WITNESS OUR HANDS, this _____ day of _____, 2003.

Owner's Name

Owner's Name

STATE OF WASHINGTON

COUNTY OF KING

Personally appeared before me, a Notary Public in and for the state and county above mentioned, _____, the within named Owner(s), with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who acknowledged that they executed the foregoing instrument for the purposes stated herein.

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2003.

Printed Name: _____

NOTARY PUBLIC in and for the State of

Washington, residing at _____.

My Commission Expires: _____.

APPENDIX C

**INFORMED CONSENT, RELEASE AND AGREEMENT
TO HOLD HARMLESS, INDEMNIFY AND DEFEND**

King County, a charter county government under the constitution of the State of Washington, hereinafter referred to as "the County," maintains a Water and Land Resources Division through the authority of the County Executive and the Department of Natural Resources and Parks. In the regular course of providing flood damage reduction services in King County, the Department of Natural Resources and Parks is distributing funds to provide assistance in the elevation of floodplain structures located within King County and subject to damage by flooding.

I (We), (Print Name) «First_Name» «Last_Name» (collectively referred to as "I") owner(s) of «Structure» ("Structure") located at «Situs_Address», which has been identified as being within the 100 year floodplain, wish to participate in King County's program for elevating floodplain structures by receiving funds to assist in having the Structure physically elevated to at least one foot above the 100-year Base Flood Elevation using the best available information. ("Structure Project").

I recognize, acknowledge, and agree that a construction project of this nature will require special skills and may involve cosmetic, functional as well as structural alteration to the Structure and/or impacts to its contents. I alone will be responsible to select the Contractor and/or oversee the work to my satisfaction. I also recognize, acknowledge and agree that the County is a funding source only and there will be no liability attached to the County as a result of its entering into the Agreement to which this Appendix C is attached.

For and in consideration of my participation in this program, as part of the eligibility for receiving program funds, and of the County materially relying thereon in determining eligibility for such funds, I agree to release, forever discharge and hold harmless the County, its officers, officials, employees and agents from any liability or claim of liability of whatsoever kind or nature which might arise out of work performed on the Structure in connection with the Structure Project. I further agree to defend the County, its officers, officials, employees and agents at no cost to the County, against any claim of liability and/or cause of action asserted against them arising out of the work performed on the Structure in connection with the Structure Project.

WITNESS MY HAND, this _____ day of _____, 2003.

Owner's Name

Owner's Name

SUBSCRIBED AND SWORN to before me this __ day of _____, 2003.

Printed Name: _____

NOTARY PUBLIC in and for the State of

Washington, residing at _____.

My Commission Expires: _____.